IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11050 of 2004

Between:

E.K. Rao, Narsipatnam Depot, S/O. Subba Rao, Age 32 Years, R/o. Narsipatnam, Visakhapatnam District.

..... PETITIONER

AND

1 The APSRTC, Rep. by its Regional Manager, Visakhapatnam Region, Visakhapatnam.
2 The APSRTC, Rep. by its Divisional Manager(R), O/o. Regional Manager, Visakhapatnam Region, Visakhapatnam.
3 The Depot Manager, APSRTC, Narsipatnam Depot, Narsipatnam, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in imposing the punishment of deferring the decasualisation of the petitioner for a period of 2 years vide3 proc No. PA/19(57)2001-VSP(R) Dt
21-9-2001, which was modified by there view authority to the extent of 1 year Vide proc.No. P3/785(2)2002-RM-VSP, dt. 26-4-2002 besides treating the period of absence as not on duty is contrary to the APSRTC (CCA) regulations, illegal, unjust and arbitrary and as such liable to be set aside in so far as it went against tot the petitioner in imposing the punishment in the interest of justice by consequently directing the respiondets to regularize the services of the petitioner on par with his colleague namely R. Sree Ramulu E- 750916 forthwith

Counsel for the Petitioner: MR.S.M.SUBHAN

Counsel for the Respondents: KUM.B.G.UMA DEVI

The Court made the following:

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ORDER:

This writ petition is filed questioning the action of the respondents in imposing the punishment of deferring the decasualisation of the petitioner for a period of two years, vide proceedings dated 21-09-2001, which was modified to the extent of one year vide proceedings dated 26-04-2002 besides treating the period of absence as not on duty is contrary to the A.P.S.R.T.C. (CCA) Regulations, illegal and arbitrary and as such liable to be set aside insofar as it went against the petitioner in imposing the punishment in the interest of justice by consequently directing the respondents to regularize the services of the petitioner.

It is the case of the petitioner that he was appointed as driver from 17-03-1998 and worked till 02-01-2001 without any blemish and due to double duties; he fell sick and absented from duties by producing the sick certificates from the private doctors. Without considering the same, he was charge sheeted on the allegations of unauthorized absence. Petitioner submits that after conducting a mechanical enquiry, he was removed from service vide proceedings dated 06-06-2001 by the 3rd respondent, Depot Manager. Thereafter, the petitioner preferred an appeal and he was reinstated into service vide proceedings dated 21-09-2001 with an order that the decasualisation of the petitioner be deferred for a period of two years besides treating the period of his absence from the date of termination till he reports for duty at Narsipatnam, as 'Not on Duty' for the purpose of decasualisation. He further

submitted that the Divisional Manager found from the report of the Senior Traffic Inspector, Paderu, that the performance of the petitioner at the depot was sincere, before he got the disease and his performance during the years 1998 and 1999 was also satisfactory. In the report of the Senior Traffic Inspector, it was presumed that his ill health has obstructed him to attend duties as the medical officer, APSRTC; Paderu, has issued a sick certificate on 01-06-2000 about his sickness. The said observations clearly demonstrate that the petitioner has not absented for duties intentionally, but the reason for his absence is that he was ill. So having found him not guilty of the absence, imposing punishment of deferment of the petitioner decasualisation is unjust, contrary to the regulations and against the principles of natural justice.

He further submitted that the punishment imposed by the appellate authority is without jurisdiction and there is no such provision to impose the punishment by deferring decasualisation and the appellate authority adopted a method to deprive his regularization; therefore, the impugned orders, including the disciplinary proceedings are liable to be set aside, insofar it went against the petitioner in the interest of justice. Further he also enumerated the penalties in Regulation 8 of APSRTC (CCA) Regulations, 1967. Hence, he prays to allow the writ petition.

On behalf of the respondent-Corporation, a counter affidavit has been filed stating that the petitioner is a casual driver in the corporation. The Senior Traffic Inspector, Paderu had reported that the petitioner had absented to his duties unauthorisedly from
14-4-2001 to 4-5-2001 and again from 28-5-2001 to 4-6-2001 and further reported that due to his absenteeism from
4-11-2000 to 3-12-2000, bus operations were dislocated and services were cancelled and inconvenience was caused to the traveling public, besides loss of revenue to the corporation. Hence, he was charge sheeted and terminated from service, after following all the principles of natural justice, from 6-6-2001. There is no dispute with regard to the appeal preferred and reinstating into service by imposing the punishment of deferring his decasualisation for a period of two years, later modified to the extent of one year.
It is further submitted that the petitioner is supposed to take treatment at the

Government Hospital/R.T.C. Dispensary available near the depot, but not from a private doctor. Consequently, he was charge sheeted for his unauthorized absence, and since he was a casual driver, he is not to be included with the persons employed by the corporation as per the APSRTC employees
(CC & A) Regulations, 1967. It is further stated that the penalties specified by the petitioner in his affidavit are applicable to all the employees of the Corporation whose conditions of service may be regulated by the corporation except to the extent otherwise expressly provided hereinafter or by any other regulation. Due to his unauthorized absence, decasualisation was deferred, so his contention that he was not decasualised along with his batch mates does not hold any water. As he was a casual employee, the punishment of deferment of decasualisation is not included in the APSRTC Employee's (CC&A) Regulations, 1967, but it is as per the circular instructions. Because of the punishment received by the petitioner, he was not decasualised in the services of the Corporation, hence, prays to dismiss the present writ petition.

Learned counsel for the petitioner contends that the punishment of deferring the decasualisation of the petitioner for a period of two years is not contemplated in the regulations, therefore, the impugned proceedings suffers very serious infirmities.

On the other hand, the learned standing counsel appearing for the Corporation contends that there is no violation of the regulations and after calling for explanation, the punishment was imposed and the punishment does not suffer from any incurable infirmities, so as to call for the interference of this Court.

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondent corporation.

The petitioner was appointed on 17-03-1998 and worked till 02-01-2001. According to him he fell sick and absent for duties and later produced a sick certificate from a private doctor. By virtue of proceedings dated 06-06-2001, he was removed from service. After conducting enquiry, punishment has been imposed.

The appellate authority confirmed the same. The disciplinary authority terminated the petitioner from the services of the corporation with immediate effect. The appellate authority ordered for decasualisation of the petitioner to be deferred for a period of two years, which, on review, is modified to one year. It is not in dispute before this Court that there is no punishment of descasualisation in the APSRTC conduct regulations 1965. Even the learned Standing Counsel appearing for the respondent Corporation neither denies nor disputes the said fact. The disciplinary authority, the appellate authority or the reviewing authority has ample power to impose suitable punishment in accordance with the regulations governing disciplinary matters. Since decasualisation is not one of the modes of punishments prescribed for misconduct in the regulations, the same cannot be imposed. Therefore the review order passed by the Regional Manager dated 26-04-2002 in modifying the deferment of decasualisation for a period of one year is set aside and the matter is remitted to the first respondent, Regional Manager, for passing appropriate orders, with regard to the punishment.

The writ petition is accordingly allowed. No order as to costs.

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K.C. BHANU, J

Dated: 18-07-2005

LSK

To

1 The Regional Manager, APSRTC, Visakhapatnam Region,

Visakhapatnam.

2 The Divisional Manager, APSRTC, O/o. Regional Manager, Visakhapatnam Region, Visakhapatnam.

3 The Depot Manager, APSRTC, Narsipatnam Depot, Narsipatnam, Visakhapatnam.

4 Two C.D. copies.